

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 860/99-00  
(These minutes have been seen by  
the Administration)

Ref : CB2/BC/22/98

**Bills Committee on  
Organized and Serious Crimes (Amendment) Bill 1999**

**Minutes of meeting  
held on Wednesday, 8 September 1999 at 10:45 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)  
Hon David CHU Yu-lin  
Hon Cyd HO Sau-lan  
Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon Ronald ARCULLI, JP  
Hon Gary CHENG Kai-nam, JP
- Members absent** : Hon Albert HO Chun-yan  
Hon SIN Chung-kai
- Public Officers attending** : Security Bureau  
  
Ms Mimi LEE  
Principal Assistant Secretary for Security (Narcotics)  
  
Mr CHAN Yiu-ming  
Statistician (S2)  
  
Hong Kong Police Force  
  
Mr Henrique KOO  
Chief Superintendent  
Narcotics Bureau

Customs and Excise Department

Mr CHAN Wing-kin  
Acting Superintendent  
Customs Drug Investigation Bureau

Department of Justice

Mr Geoffrey FOX  
Senior Assistant Law Draftsman

Miss Leonora IP  
Government Counsel

**Clerk in attendance** : Mrs Sharon TONG  
Chief Assistant Secretary (2)1

**Staff in attendance** : Mr Stephen LAM  
Assistant Legal Adviser 4

Miss Betty MA  
Senior Assistant Secretary (2) 1

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Action

**I. Confirmation of minutes of meeting**  
(LC Paper No. CB(2) 2750/98-99)

The minutes of the meeting held on 21 July 1999 were confirmed.

**II. Meeting with the Administration**

Outstanding issues

2. The Chairman informed members that an advertisement had been placed on the South China Morning Post and the Hong Kong Economic Times on 27 July 1999 to solicit views from the trade on the Bill. No response had been received.

Action

3. At the invitation of the Chairman, Principal Assistant Secretary for Security (Narcotics) (PAS(S)N) took members through the Administration's response to issues raised at the previous meeting (LC Paper No. CB(2) 2748/98-99(01)). She highlighted the following points -

- (a) As the Administration did not have a comprehensive list of money changers and remittance agents operating in Hong Kong, it did not have ready information on the amount of transactions by customers of money changers and remittance agents. Information on the amount of transactions in the two businesses was collected from the two surveys conducted in 1997 and 1998. Findings of the surveys indicated that the number of customers, transactions and monthly turnover varied greatly amongst money changers and remittance agents. An "average transaction" could vary from several thousand to many hundred thousand Hong Kong dollars. In the circumstances, the Administration proposed to introduce the keeping of a register and require all money changers and remittance agents to keep records of transactions for transactions amounting to \$20,000 or more; and
- (b) In the United States, a system similar to that being proposed by the Administration was used to regulate money changers and remittance agents. A recently announced Regulation in the US required money changers, remittance agents and money services business to register with, but not obtain a licence from, the relevant authority. More information was required under the US system than that being proposed by the Administration.

4. Mrs Selina CHOW suggested that as operational details of the proposed requirements were not made known to the trade in the course of the questionnaire surveys or visits conducted by the Administration in 1997 and 1998, clear instructions and guidelines on the proposed requirements should be provided to the trade concerned.

5. In response, PAS(S)N said that guidelines would be issued to the trade after the enactment of the Bill. Follow-up visits would be conducted with a view to explaining to remittance agents and money changers the statutory requirements. She added that the salient features of the legislative amendments and the proposed operational requirements were already outlined in the two questionnaires, in particular the one issued in 1998.

6. Mrs Selina CHOW expressed concern about the difficulties to be faced by the trade in obtaining customer identification bearing in mind the relevant provisions of the Personal Data (Privacy) Ordinance. In addition, money changers and remittance agents would not be able to verify the accuracy of personal particulars of a customer.

Action

7. PAS(S)N responded that the Administration would encourage the money changers and remittance agents to issue clear instructions to their employees on how to comply with the statutory requirements, in particular, employees should be reminded that a transaction should not be made if the customer failed to provide the required information. PAS(S)N said that the proposed requirements had taken into account the business practices of the trade. The information required of customers comprised primary personal data that could be verified on the spot, e.g. the name and identity card or travel document number. The requirement to keep customer and transaction records was a step forward to provide an audit trail of the businesses or transactions conducted. As to whether customers of money changers and remittance agents could refuse to provide personal identification on the grounds of the Personal Data (Privacy) Ordinance, PAS(S)N said that the Privacy Commissioner for Personal Data had been consulted on the issue. The Privacy Commissioner advised that money changers and remittance agents could seek personal data provided that the personal data principles under the relevant Ordinance were observed. Moreover, the information obtained should be relevant to the purpose of the legislation. PAS(S)N added that guidelines to be issued to the trade would include reminder on proper handling and keeping of the customers' personal data for the purpose of the Personal Data (Privacy) Ordinance.

8. The Chairman asked, in the event of a company account was involved in a money changing or remittance transaction, whether an employee of the company concerned conducting the transaction would be regarded as a customer under the Bill. PAS(S)N replied that all money changers and remittance agents were required to keep records in respect of any person involved in a money changing or remittance transaction, regardless of whether he was acting on behalf of his employer or himself, when the transaction amounting to \$20,000 or more. The purpose was to obtain as much information as possible for an audit trail of the businesses or transactions conducted. The relevant requirements would be spelt out in the Schedule to the Bill.

9. The Chairman expressed doubt about the need to keep personal particulars of the employee conducting a transaction involving a company account as sufficient information about the identity of the account holder was already available for the purpose of audit trail. Chief Superintendent (Narcotics Bureau) (CSP(NB)) explained that from operational experience, personal cheques might be used in transactions concerning company accounts. There was an operational need to keep records of personal particulars of all parties involved in a money changing or remittance transaction for the purpose of audit trail.

10. Miss Cyd HO enquired about the profile of the respondents of the surveys conducted in 1997 and 1998. PAS(S)N said that the questionnaires used in the surveys aimed to collect as much information as practicable. Questions

Action

concerning the mode of operation of the trade were covered in the questionnaires, such as the number of staff in the reported company, whether the company kept record of each transaction and the average amount of each transaction per day. The profile of the respondents of the 1997 survey was summarized in paragraph 18 of Annex I to the Administration's response. CSP(NB) supplemented that the 92 money changers and 87 remittance agents where questionnaires were sent in 1998 were known to the Police Force in the course of its investigations into suspected money laundering operations.

11. Miss Cyd HO said that many foreign domestic helpers in Hong Kong would remit money to their home countries via small remittance agents operating in shopping arcades. She asked whether these remittance agents were included in the surveys as they might not have been surfaced by the Police during its investigations into money laundering operations. The Chairman pointed out that these remittance agents would have direct and frequent contact with the general public in remittance transactions. PAS(S)N said that notwithstanding the Administration did not have a comprehensive list of remittance agents and money changers operating in Hong Kong, it was confident that the findings of the 1997 and 1998 surveys could fully reflect the cross-section of the trade.

12. Mrs Selina CHOW considered that as the proposed requirements were not too harsh and no opposing views had been received from the trade, there was no need to conduct separate survey on the proposed requirements in respect of those remittance agents mainly engaging in remittance transactions by foreign domestic helpers. However, the Administration should step up its publicity efforts on the proposed requirements to these remittance agents. PAS(S)N said that the Administration agreed that educational publicity on the proposed requirements was important for both the remittance agents and customers. Responding to the Chairman's comment that the two consultation exercises were incomprehensive, PAS(S)N said that in the 1998 survey, the Administration had approached the Census and Statistics Department for assistance for a list of the remittance agents and money changers in Hong Kong. The Administration had made every effort to contact the trade as far as practicable.

Clause-by-clause examination

*New section 24A. - Interpretation*

(i) *Definition of money*

13. In response to the Chairman's enquiry about the meaning of "form" in the definition of "money", PAS(S)N said that the definition covered electronic monetary transactions. The Chairman further asked whether the use of valuable commodities such as gold was within the meaning of "money". Senior Assistant Law Draftsman (SALD) explained that the purpose of adding

Action

"whatever form" to the definition of "money" was to cater for orders for payment of specified sums, which might not necessarily be in the form of cash. For example, in some remittance transactions, a customer might deposit a cheque with a remittance agent which had an agent in the receiving country. The recipient might receive from the overseas agent the sum in the form of valuable commodities.

14. The Chairman enquired whether the example quoted by SALD was a major investigation area of money laundering. CSP(NB) responded that in some countries, the recipients might receive valuable commodities in remittance transactions and vice versa. The proposed amendment intended to cover this type of transaction with a view to strengthening the enforcement by the Police.

15. The Chairman said that if it was the policy intent to cover valuable commodities, the Administration might need to consider reviewing the drafting of the definition of "money". SALD agreed to consider.

Adm

(ii) *Definition of "remittance agent"*

16. Noting that the Bill proposed to exempt "authorized institutions" within the meaning of the Banking Ordinance, "authorized insurers" within the meaning of the Insurance Companies Ordinance and "registered persons" within the meaning of the Securities and Futures Commission Ordinance, the Chairman enquired about the respective regulations on these institutions. In reply, PAS(S)N said that these institutions were proposed to be exempted from the Bill because they were already regulated by the relevant legislation and their respective regulators, viz. the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Insurance Authority (IA). Anti-money laundering guidelines had been issued by the respective financial regulators. If an institution under regulation violated the guidelines, it would be subject to a revocation of its licence. She pointed out that the Administration was aware of the concern about the difference in requirements between these institutions and money changers and remittance agents in dealing with money changing and remittance transactions. Having given due consideration to the matter, the Administration considered that the guidelines issued by the respective regulators were generally in line with the requirements proposed in the Bill regarding checking customer background, keeping customer identification and transaction records and reporting suspicious transactions, and that such guidelines would be further reviewed after the passage of the Bill. She stressed that the primary objective of the Bill was to introduce anti-money laundering measures for the non-bank financial institutions, which were presently unregulated.

17. PAS(S)N informed members that the Financial Services Bureau (FSB) suggested that leveraged foreign exchange traders within the meaning of the Leveraged Foreign Exchange Trading Ordinance and insurance brokers which

Action

were regulated by SFC and IA respectively should also be exempted from the definition of "remittance agent". In line with the rationale adopted in exempting institutions and registered persons from the definition of "remittance agent", the Administration proposed to move amendments to the Bill to add to the list of exemption under the definition of "remittance agent" in proposed section 24A the licensed leverage foreign exchange traders and insurance brokers.

Adm 18. The Chairman said that the proposed exemption of licensed leverage foreign exchange traders from the statutory requirements was understandable and acceptable. However, he expressed reservations about the proposal to exempt individual insurance brokers from the statutory requirements. Mrs Selina CHOW echoed the Chairman's view. She pointed out that individual insurance brokers were only required to observe the relevant code of practice issued by their regulator. However, the code of practice was not a piece of legislation. PAS(S)N responded that as advised by FSB, the code of practice for insurance brokers was made pursuant to the Insurance Companies Ordinance. She undertook to provide further information on the codes of practice or guidelines for insurance brokers in respect of anti-money laundering measures.

Adm 19. The Chairman said that as far as he was aware, a "registered person" within the meaning of the Securities and Futures Commission Ordinance was subject to less stringent regulation than a banking institution. He expressed reservations about the proposed exemption of such registered persons from the statutory requirements as it might create a even greater loophole in anti-money laundering legislation. The Chairman requested the Administration to advise on the meaning of "registered person" under the Securities and Futures Commission Ordinance as referred to in the definition of "remittance agent". PAS(S)N undertook to provide a written response.

20. Assistant Legal Adviser 4 pointed out that the Post Office also engaged in remittance transactions. He enquired about the application of the statutory requirements on the Post Office. PAS(S)N assured members that the Post Office would observe the statutory requirements when engaging in remittance transactions. Administrative measures would be adopted by the Post Office to ensure compliance with the requirements.

(iii) *Definition of "record"*

21. Responding to Miss Cyd HO, PAS(S)N said that electronic record was within the meaning of the definition of "record". Miss Cyd HO further asked whether a record must be in written form. SALD replied that it would be at the discretion of a remittance agent to decide the format of keeping records. It could be in written or other forms. PAS(S)N added that the Administration intended to cover as many forms of records as possible in the definition.

Action

22. Miss Cyd HO enquired about the consequences of losing electronic data. The Chairman asked whether persons responsible for keeping customer and transaction records would be held liable in the event such records were lost. SALD said that if a written record was destroyed due to uncontrollable or unforeseeable factors, the record keeper would not be accused of breaching the legislation. Similarly, the rationale would be extended to an electronic form of record.

*New section 24B. - Register of remittance agents and money changers*

23. Responding to the Chairman, PAS(S)N said that the Chief Superintendent (Narcotics Bureau) of the Hong Kong Police Force, who supervised the work of the Joint Financial Intelligence Unit, would be appointed as the designated public officer responsible for maintaining the register.

24. Mrs Selina CHOW urged that the Administration should step up publicity on the notification system as some of the remittance agents might not be aware that they were regarded as remittance agents under the Bill.

*New section 24C - Duty on remittance agents and money changers to keep records*

25. Referring to Tables 1 and 2 of the information paper, Mrs Selina CHOW pointed out that over half of the money changers which responded to the questionnaire indicated that the average amount of each transaction per day ranged from \$10,000 to under \$50,000, and the daily average transaction of over 36% of the respondents was under \$10,000. She asked whether consideration would be given to lowering the proposed threshold. In reply, PAS(S)N said that the \$20,000 threshold was set having regard to the need to minimize disruption to the businesses concerned and the operational need of the enforcement agencies. She said that although the proposed threshold was quite low, under proposed section 24C(5), the Secretary for Security was empowered to amend the threshold by notice in the Gazette. Responding to the Chairman, SALD said that the notice in the Gazette to be made by the Secretary for Security under section 24C(5) would be subsidiary legislation.

26. Noting from section 24C(2) that a remittance agent should verify the name and identity of its customers if the amount exceeded the threshold, the Chairman expressed concern whether a customer could avoid the verification requirement if he never appeared in person to make a transaction, e.g. he could effect a transaction by making a phone call. PAS(S)N said that a remittance transaction would normally be made in person from the practical operational point of view. CSP(NB) said that remittance transactions for long term customers were often effected through account with banking institutions.



Action

27. The Chairman enquired whether banking institutions were required to keep records of customer identification in money changing transactions as that required of money changers under the Bill. He said that if this was not the case, the difference in statutory requirements of money changers and banking institutions would give rise to unfair competition. He suggested that the Administration should consider extending the requirements of customer identification and record keeping in money changing transactions to banking institutions. PAS(S)N agreed to revert to the Bills Committee.

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28. Miss Cyd HO requested the Administration to provide a comparison of anti-money laundering regulations or guidelines for authorized institutions within the meaning of the Banking Ordinance, authorized insurers within the meaning of the Insurance Companies Ordinance, registered persons within the meaning of the Securities and Futures Commission Ordinance, leveraged foreign exchange traders within the meaning of the Leveraged Foreign Exchange Trading Ordinance and the statutory requirements for remittance agents and money changers under the Bill. PAS(S)N agreed to consult FSB and provide the requested information. She said that the Administration would maintain constant dialogue with the relevant financial regulators with a view to assessing the need to revise their relevant anti-money laundering guidelines to tie in with the statutory requirements.

Adm

29. The Chairman enquired about the differences in the particulars to be recorded by the remittance agents and money changers as required under sections 24C(2) and 24C(3). CSP(NB) said that remittance agents were required to keep more detailed transaction records than that required of money changers. Parts 1 to 3 of Schedule 6 were applicable to remittance agents whereas Part 4 of Schedule 6 was applicable to money changers. PAS(S)N then took members through the relevant Parts of the Schedule.

*New section 24D - Criminal liability*

30. The Chairman said that under the Bill, an employee of a money changer or remittance agent would be subject to criminal liability for non-compliance with the proposed statutory requirements. However, an employee of a banking institution would not be held criminally liable for committing the same act. He expressed concern about the disparity in treatment. Mrs Selina CHOW echoed the Chairman's concern.

31. PAS(S)N responded that if a banking institution failed to comply with the anti-money laundering guidelines issued by HKMA, it were subject to the revocation of its operating licence. Internal instructions would be issued by banking institutions to ensure compliance with HKMA's guidelines. She pointed out that in handling a money changing or remittance transaction, the financial institution concerned would obtain the required customer information regardless of the amount involved, in accordance with the "know your customer" principle,

Action

follow specified procedures in customer identification and keeping records of transactions and report suspicious transactions. The objective of providing an audit trail of business conducted could be achieved. The Administration therefore saw no need to extend the proposed statutory requirements to financial institutions. She reiterated that the Administration would maintain close contact with the banking, financial and insurance sectors with a view to revising the relevant guidelines whenever the needs arose so as to avoid the inconsistency in anti-money laundering policy for the financial institutions and non-bank financial institutions.

32. The Chairman was of the view that as a matter of principle, every person should hold the same criminal liability for committing the same offence on equity ground. He reserved his position on the matter. Mrs Selina CHOW considered the Administration's explanation acceptable as there was no regime for remittance agents and money changers regulating their operations as that put in place in the banking sector. The question on disparity would have to be viewed from a wider perspective. There might not be a practical need to adopt totally parallel treatments for financial institutions and non-bank financial institutions in respect of anti-money laundering measures. She, however, expressed doubt about the need for holding a remittance agent or a person employed by a remittance agent criminal liability for non-compliance with the statutory requirements.

33. Responding to Mrs Selina CHOW's enquiry as to whether persons employed by money changers or remittance agents could use negligence as a defence in the event that they were prosecuted for non-compliance with the statutory requirements, SALD said that when a remittance agent completed a remittance transaction without recording the transaction or keeping a record, he had committed an offence under the proposed section 24C(2)(a). PAS(S)N pointed out that under the proposed section 24D(1)(b), a remittance agent would have committed an offence unless he had taken reasonable steps to prevent the commission of the offence.

34. The Chairman enquired about the practical effect if section 24D(1)(a) was deleted. PAS(S)N responded that if section 24D(1)(a) was deleted, the enforcement agencies would not be able to institute prosecutions against money laundering offence on some occasions. She pointed out that the legislative intent was to ensure that every person involved in a remittance transaction held a legal responsibility. SALD added that the criminal liability proposed under section 24D in the Bill was the same as section 11 of the Money Changers Ordinance.

35. Mr Ronald ARCULLI asked whether consideration would be given to adding a defence provision for a person employed by a remittance agent similar to the defence provision for a remittance agent provided under section 24D(1)(b). PAS(S)N agreed to provide a written response on this point.

Action

36. Mr Ronald ARUCLLI asked, in the event of loss of customer records in unforeseeable circumstances, e.g. outbreak of a fire, whether a remittance agent would be held liable. SALD said that the defendant would have to prove that he had exercised due diligence to avoid the commission of the offence.

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37. The Chairman considered that section 24D(1)(c) was too harsh as a partner might not participate actively in the routine operation of a corporation. PAS(S)N said that the Administration would take into account the sufficiency of evidence when instituting prosecutions. The Chairman requested the Administration to consider reviewing the provision so that only persons who were occupying managing capacity in a company would be subject to the provision.

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38. Mr Ronald ARCULLI pointed out that under section 24D(1), an employee of a remittance agent would be held criminally liable for non-compliance with proposed section 24C(2)(c). He expressed doubt about whether it was practicable for an employee to keep remittance records for not less than six years if his employer had ceased business. SALD said that, generally speaking, the arrangement regarding keeping of records when a company was wound up would be governed by the relevant provisions of the Companies Ordinance. SALD agreed to consider the drafting.

Adm

39. Mr Ronald ARCULLI and the Chairman pointed out that the treatment regarding the onus of proof for partnerships under section 24D(4) was different from that for limited companies under section 24D(1)(c). The Chairman requested the Administration to consider whether the requirement regarding onus of proof should be the same for both limited companies and partnerships.

*New section 24E - Power of authorized officers to enter premises and inspect book, etc.*

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40. To facilitate discussion at the next meeting, Mr Ronald ARCULLI requested the Administration to consider whether premises included domestic premises under proposed section 24E and whether a judicial warrant would be required for entering domestic premise. Mr Ronald ARCULLI and the Chairman also requested the Administration to explain the arrangements on records seizure and whether money chargers or remittance agents would be provided with copies of the documents seized.

### **III. Date of next meeting**

41. The Chairman said that the next meeting would be scheduled pending the Administration's response to issues raised by members. He also suggested that representatives from FSB be invited to the next meeting.

Action

42. The meeting ended at 12:50 pm.

Legislative Council Secretariat

30 November 1999